

IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 15TH DAY OF OCTOBER 2019 / 23RD ASWINA, 1941

RCRev. No.228 OF 2018

AGAINST THE JUDGMENT DATED 04-01-2018 IN RCA NO.15/2016 OF RENT
CONTROL APPELLATE AUTHORITY,KASARAGOD

AGAINST THE ORDER DATED 20-07-2016 IN RCP NO.21/2015 OF RENT
CONTROL COURT (PRINCIPAL MUNSIF), KASARAGOD

REVISION PETITIONER/ (APPELLANT/RESPONDENT)

AMEER, AGED 56 YEARS, SON OF MAMMUNHI HAJI,
PROPRIETOR, AMEER DEENAR, SHOP NO.KMC.III/652,
AIRLINE BUILDING, K.P.R RAO ROAD, KASARAGOD TALUK, POST
KASARAGOD-671 121.

BY ADVS.SRI.C.R.SYAMKUMAR
SHRI.NANDAGOPAL
SRI.K.ARJUN VENUGOPAL
SMT.V.A.HARITHA
SRI.SIDHARTH B PRASAD
KUM.GAYATHRI MURALEEDHARAN

RESPONDENTS (RESPONDENTS/PETITIONERS) :

- 1 M/S.B.AMOO AND BROTHERS, PROPRIETOR, HOTEL AIRLINES,
K.P.R RAO ROAD, KASARAGOD, REPRESENTED BY ITS MANAGING
PARTNERS, B.ABDUL RAHIMAN, S/O ABDULLA AND B.ABDULLA
KUNHI, S/O.B.AMOO HAJI, RESIDING AT BEVINJE, CHENGALA
VILLAGE, KASARAGOD TALUK,
POST KASARAGOD-671 121.
- 2 B.ABDUL RAHIMAN, AGED 82 YEARS, S/O.ABDULLA, RESIDING AT
BEVINJE, CHENGALA VILLAGE, KASARAGOD TALUK,
POST KASARAGOD-671 121.
- 3 B.ABDULLA KUNHI, AGED 58 YEARS, S/O.B.AMOO HAJI,
RESIDING AT BEVINJE, CHENGALA VILLAGE, KASARAGOD
TALUK, POST KASARAGOD-671 121.

R1 TO R3 BY ADV. JAWAHAR JOSE

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON
25.09.2019, ALONG WITH RC.Rev.NO.83/2019, THE COURT ON 15-10-2019
PASSED THE FOLLOWING:

R.C.R.Nos.228 of 2018
&
83 of 2019

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IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT

THE HONOURABLE MR. JUSTICE A.HARIPRASAD

&

THE HONOURABLE MR.JUSTICE T.V.ANILKUMAR

TUESDAY, THE 15TH DAY OF OCTOBER 2019 / 23RD ASWINA, 1941

RCRev. No.83 OF 2019

AGAINST THE JUDGMENT DATED 06-12-2018 IN RCA NO.11/2017 OF RENT CONTROL
APPELLATE AUTHORITY,KASARAGOD

AGAINST THE ORDER DATED 19-10-2017 IN RCP NO.17/2016 OF RENT CONTROL
COURT (PRINCIPAL MUNSIF), KASARAGOD

REVISION PETITIONER/APPELLANT/RESPONDENT:

MR. ABDUL NASSAR, AGED 63 YEARS, PROPRIETOR, FANCY
ELECTRICALS, SHOP NO.KMC III/653, AIRLINES BUILDING,
K.P.R. RAO ROAD, KASARAGODE VILLAGE AND POST,
KASARAGODE TALUK AND DISTRICT.

BY ADVS.SRI.C.R.SYAMKUMAR, SRI.SOORAJ T.ELENJICKAL
SRI.P.A.MOHAMMED SHAH, SRI.K.ARJUN VENUGOPAL
SMT.V.A.HARITHA, SRI.SIDHARTH B PRASAD
SRI.R.NANDAGOPAL, SHRI.ASWIN KUMAR M J

RESPONDENTS/RESPONDENTS/PETITIONERS:

- 1 M/S.B.AMOO AND BROTHERS, PROPRIETOR, HOTEL AIRLINES,
K.P.R RAO ROAD, KASARAGODE-671 121, REPRESENTED BY
ITS MANAGING PARTNERS B. ABDUL RAHIMAN AND
B. ABDULLAKUNHI.
- 2 MR. B. ABDUL RAHIMAN, AGED 80 YEARS, S/O. ABDULLA,
RESIDING AT BEVINJE, CHENGALA VILLAGE, KASARAGODE
TALUK, KASARAGODE DISTRICT-671 541
- 3 MR. ABDULLAKUNHI, AGED 56 YEARS, S/O. B. AMOO HAJI,
RESIDING AT BEVINJE, CHENGALA VILLAGE, KASARAGODE
TALUK, KASARAGODE DISTRICT-671 541

R1 TO R3 BY ADV. SHRI.JAWAHAR JOSE

THIS RENT CONTROL REVISION HAVING BEEN FINALLY HEARD ON 25.09.2019,
ALONG WITH RCRev..228/2018, THE COURT ON 15-10-2019 PASSED THE
FOLLOWING:

R.C.R.Nos.228 of 2018
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“C.R.”

A.HARIPRASAD & T.V.ANILKUMAR, JJ.

**R.C.R.Nos.228 of 2018
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Dated this the 15th day of October, 2019

COMMON ORDER

Hariprasad, J.

In the captioned cases, common respondents figure in the party array. 1st respondent is an unregistered partnership firm represented by its managing partners. Managing partners of the 1st respondent firm are arrayed as respondents 2 and 3 individually too. They together filed two eviction petitions, against two tenants occupying two separate rooms in a larger building, claimed to be belonging to the 1st respondent partnership firm, on the ground that the tenants kept rent in arrears and also the respondents bonafide needed vacant possession of the rooms to fulfill the requirement of two partners, by invoking Sections 11(2) and 11(3) of the Kerala Buildings (Lease and Rent Control) Act, 1965 (in short, "the Act"). Revision petitioners are the tenants who lost in the Rent Control Court as well as in the Appellate Authority where bonafide need was concurrently found in favour of the respondents. It is submitted by the learned counsel for the revision

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petitioners that the eviction orders in both cases under Section 11(2)(b) of the Act, for keeping rent in arrears, were vacated by invoking Section 11(2)(c) by depositing the quantified arrears of rent. In both these revisions, therefore, the ground of eviction surviving for consideration is under Section 11(3) of the Act.

2. It is to be noticed that bonafide need set up for eviction of the tenant in R.C.P.No.21 of 2015 before the Rent Control Court, Kasargod is for own occupation of Smt.Hajira, who is said to be a sleeping partner in the unregistered firm, for starting a tailoring shop. Tenant has disputed bonafides of the need by contending that averments in the petition are machinations to unjustly evict him. Against the concurrent findings in the above Rent Control Petition, R.C.R.No.228 of 2018 has been filed.

3. Respondents claimed eviction in R.C.P.No.17 of 2016 against another tenant under the aforementioned ground contending that they require the building for bonafide occupation of Smt.Jameela, who allegedly is a partner of the firm, for starting a fancy articles store. It is pointed out by the learned counsel for the revision petitioners that from the evidence adduced in the case, it has been revealed that Jameela was not a partner of the firm, but a legal heir of a deceased partner. Here also the tenant disputed genuineness of the bonafide need contending that it is only a stratagem to send him out of the

tenanted premises without any lawful reason.

4. The revision petitioners not only disputed bonafides of the need set up in the eviction petitions, but contended that they are entitled to get the protection of the second proviso to Section 11(3) of the Act. After considering the evidence, the courts below granted eviction repelling the contentions of the revision petitioners.

5. Heard Sri.C.R.Syam Kumar, learned counsel for the revision petitioners and Sri.Jawahar Jose, learned counsel for the respondents.

6. In both cases, the revision petitioners challenge correctness of the eviction order under Section 11(3) of the Act contending that the courts below erred seriously in assessing bonafides of the need put forward by the respondents. Apart from that, the revision petitioner in R.C.R.No.228 of 2018 urged a contention that when the landlord is a partnership firm, individual need of a partner, especially that of a sleeping partner, to start an independent business will not come within the ambit of bonafide need under Section 11(3) of the Act. It is also contended that the courts below ought to have appreciated the fact that Section 11(3) of the Act would apply only if the premises are needed for the business of the firm. Yet another contention is that the expressions “own occupation” or “for occupation of any member of the family dependent on him” under Section 11(3) of

the Act will not embrace a claim to use the building by one of the partners for his or her exclusive or individual purpose.

7. In R.C.R.No.83 of 2019, apart from the challenge against the finding of bonafide need by the courts below, a question is raised whether eviction under Section 11(3) of the Act can be granted in respect of a building owned by a partnership firm, if bonafide need urged is for a person who is not a partner of the firm.

8. Learned counsel for the respondents attempted to shape up a contention that Ext.A5 partnership deed produced and marked in R.C.P.No.21 of 2015 (which is exhibited as Ext.A9 in R.C.P.No.17 of 2016) would clearly reveal that immovable property; viz., the building and appurtenant land, has not been made the asset of the firm. According to him, Ext.A5 is only a partnership for collection and division of the rent accrued from the building. It is also contended that the building and land belong to respondents 2 and 3 and other co-owners as tenants-in-common. As per the terms in Ext.A5 partnership deed, the building and immovable property were not brought to the common stock. Reliance is placed on Clause 4 in the partnership deed to contend that capital assets of the parties are the amounts standing to their credit in the books of accounts as on 21st day of February, 2000.

9. One glaring fact is that Ext.A5 partnership deed is a reconstitution deed. The recitals therein would show that the parties 1

to 3 to Ext.A5 were carrying on a business along with B.Amoo Haji in the name and style of “B.Amoo & Bros., Prop: Hotel Airlines, Bank Road, Kasargode” as per the terms and conditions embodied in a deed of partnership dated 01.04.1992. It is also seen that B.Amoo Haji expired on 20.02.2000 and therefore, Ext.A5 partnership deed was executed for reconstituting the partnership by admitting his legal heirs as partners. It is pertinent to note that the original deed of partnership executed on 01.04.1992 has not been produced by the respondents. In the absence of the original partnership deed, which operated during the life time of B.Amoo Haji, it may not be possible to find out what are the assets that had been brought to the common stock. We find no tangible explanation from the side of the respondents for not producing this document.

10. Respondents' contention that the building and immovable property are not assets of the firm and only the rent collected therefrom could be taken as the asset of the firm is stoutly denied by the revision petitioners. Strikingly, the respondents raise such a contention for the first time in these revision petitions. According to Mr.Syam Kumar, this newly developed argument will go against the pleadings in the eviction petitions and also the evidence adduced by the managing partner of the firm in both the cases.

11. Our attention has been drawn to the averments in

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R.C.P.No.21 of 2015, wherein it has been clearly mentioned in paragraph 3 that the petition A schedule building is one of the shoprooms in the building complex under the name and style “Hotel Airlines, Bank Road, Kasaragod”. It is also averred that the partnership firm (1st respondent) is the owner of the building. Further, respondents 2 and 3 are the managing partners. Besides, it is pleaded that the firm, who is the owner of the building, is an unregistered entity. True, it is mentioned in the petition that respondents 2 and 3 are co-owners of the building and eviction petition has been filed on behalf of all the partners of the firm.

12. On a perusal of the eviction petition in R.C.P.No.17 of 2016, we find exactly the same pleadings in paragraph 3, emphatically stating that the 1st respondent partnership firm is the owner of the building. In the teeth of this definite pleadings, we find no merit in the argument raised by the learned counsel that the building was not brought in as an asset of the firm as per Ext.A5. On the contrary, the entire pleadings are to the effect that the firm is the owner of the building.

13. 3rd respondent testified in both the cases as PW1. In the proof affidavit filed by PW1 in lieu of his chief examination, he has expressly stated that the 1st respondent, the partnership firm, is the owner of the building. This also pins him down to an undeniable fact

that the shop rooms in dispute are owned by the partnership firm. Therefore, we reject the argument raised by the learned counsel for the respondents that Ext.A5 is a partnership deed executed only for sharing profit and loss in respect of the rent collected from the building.

14. Although the 1st respondent is an unregistered firm, its right to file an eviction petition under Section 11(3) of the Act cannot be disputed. Learned counsel for the revision petitioners fairly conceded that law declared by the Supreme Court in **Haldiram Bhujawala v. Anand Kumar Deepak Kumar ((2000) 3 SCC 250)**, which was followed by a Division Bench of this Court in **Dungarsi Ranchhudas v. Mooliji Visanji (2004(2) KLT 524)** would clearly establish that Section 69(2) of the Partnership Act, 1932 cannot bar the enforcement of a statutory right, by way of an eviction petition, by an unregistered firm. Indisputably, an eviction petition under Section 11 of the Act is one to enforce a statutory right, which is not controlled by any other law or contract.

15. As stated above, in the eviction petition, it is seen mentioned that respondents 2 and 3 are co-owners of the building. It is further contended that all the partners are co-owners of the building, in which the tenanted premises are also included. On this basis, learned counsel contended that respondents 2 and 3, who are co-owners, are entitled to seek eviction on behalf of other co-owners. Generally

speaking, there is no legal impediment for one of the co-owners to file a petition for eviction of a tenant, if he does so without negating the rights of other co-owners. It is also an unchallengeable proposition that the petitioner-co-owner need not obtain prior consent of other co-owners for filing an eviction petition (see **Mohinder Prasad Jain v. Manohar Lal Jain ((2006) 2 SCC 724)** and **Kasthuri Radhakrishnan and others v. M.Chinniyan and another ((2016) 3 SCC 296)**).

16. But, this legal principle cannot be applied to these cases for the reason that we have already seen that the buildings belong to the 1st respondent firm. Principle that one out of other co-owners is entitled to maintain a petition for eviction under the Act is grounded on the legal reality that each co-owner can be presumed to be the absolute owner of the building for the purpose of eviction of a tenant, as long as he does not negate the rights of other co-owners. If the respondents 2 and 3 had initiated the eviction petitions on the ground that they are co-owners, and not as partners of a firm, then, probably the argument would have been appealing. But, in this case, having specifically pleaded and deposed before the court that the building belongs to a partnership firm, they cannot raise such a contention at this stage.

17. For completion of the discussion, we may refer to Section 14 of the Partnership Act, 1932. It reads as follows:

“The property of the firm.- Subject to contract between the partners, the property of the firm includes all

property and rights and interest in property originally brought into the stock of the firm, or acquired, by purchase or otherwise, by or for the firm, or for the purposes and in the course of the business of the firm, and includes also the goodwill of the business.

Unless the contrary intention appears, property and rights and interests in property acquired with money belonging to the firm are deemed to have been acquired for the firm.”

This Section describes, subject to the contract between the partners, as to what are the property of a partnership firm. Property and interests in property, originally brought into the stock of the firm or acquired, by purchase or otherwise, by or for the firm, or for the purpose and in the course of business of the firm, constitute the property of the partnership. As stated above, pleadings and evidence in these cases emphatically show that the whole building has become the property of the firm as envisaged in Section 14 of the Partnership Act. Withholding the original deed of partnership dated 01.04.1992 is a circumstance against the respondents on which adverse inference can be drawn.

18. Lucid expositions in **Lindley** on the “**Law of Partnership**” tell us how a partnership property could be distinguished from a joint property (see 15th Edition, paged 79-80). Characteristic features of co-ownership and partnership compared, which are relevant in the Indian context, are extracted hereunder:

“.....Speaking generally, and excluding all exceptional cases, the principal differences between co-ownership and partnership may be stated as follows :

- 1. Co-ownership is not necessarily the result of agreement. Partnership is.*
- 2. Co-ownership does not necessarily involve community of profit or of loss. Partnership does.*
- 3. One co-owner can, without the consent of the others, transfer his interest, or in the case of land his equitable interest, to a stranger, so as to put him in the same position as regards the other owners as the transferor himself was before the transfer, except that in the case of a transfer by a joint tenant the stranger will become a tenant in common, or in the case of land a tenant in common in equity with the other owners. A partner is in a much more restricted position.*
- 4. One co-owner is not as such the agent, real or implied, of the others. A partner is – so far as concerns activities falling within the scope of the partnership.*
- 5. One co-owner has no lien on the thing owned in common for outlays or expenses, nor for what may be due from the others as their share of a common debt. A*

partner has.”

On understanding the salient features distinguishing a co-ownership and a partnership in the above lines, it has to be found in these cases that even if the respondents and others are tenants-in-common in respect of the property and building thereon, on formation of a partnership, they become assets of the unregistered partnership. Once co-owners decide to form a partnership by pooling their joint rights over the property and execute a deed of partnership, their rights will be subject to the contract between them. In that case, the legal incidents of co-ownership will be eclipsed as long as the partnership arrangement continued. Therefore, these aspects also render the case of the respondents unacceptable.

19. We shall now take up the crucial question to be decided in these cases regarding the acceptability of the bonafide need set up by the respondents. In order to understand the scope and legal effect of Section 11(3) of the Act, excluding the provisos thereto, we shall extract the provision:

“A landlord may apply to the Rent Control Court for an order directing the tenant to put the landlord in possession of the building if he bona fide needs the building for his own occupation or for the occupation by any member of his family dependent on him”

A dissection of the above provision will show that the following legal components are to be established by a landlord against a tenant to claim eviction under the provision. Firstly, his need should be bonafide. Authentic, genuine, real, true, actual, sound, legal, legitimate, valid, unadulterated, etc. are the dictionary meanings of the word “bonafide”. It has been well settled by pronouncements that a mere desire or wish evinced by a landlord would not amount to bonafide need. Landlord must prove that he genuinely requires the accommodation for his own use or for occupation of any member of his family dependent on him. In other words, bonafide need must be an outcome of a sincere and honest desire in contradistinction with a mere pretext for evicting a tenant. Since decisions are galore on the point, we do not deem it necessary to enlist them. We only intend to make it clear that bonafide need being a state of mind, a landlord must place all the materials before the court to assess the genuineness and truthfulness of his claim for eviction.

20. After establishing the bonafides of his claim, the landlord has to convincingly show that the building is required for his own occupation or for occupation of any member of his family dependent on him. The expression “own occupation” poses no difficulty to understand. It is settled by judicial pronouncements that a landlord can claim eviction under Section 11(3) of the Act for occupying the building

as such, with or without any modification, or for demolishing it for constructing a new building in its place or keeping the site vacant for other purposes, like to provide an access, extension of an existing adjacent building, etc. In this context, it is to be remembered that a landlord seeking eviction under Section 11(3) of the Act for demolition of the structure in existence and for construction of a building for his own use or for occupation of any member of his family dependent on him must be distinguished from a claim for eviction on the ground of reconstruction, where the tenant could claim a first option for occupying a portion of the reconstructed building. The pleadings in each case will determine the nature of the claim for eviction.

21. Regarding the claim by a landlord for evicting a tenant under Section 11(3) of the Act for occupation of any member of his family dependent on him, following aspects will have to be established by him. Initially, as stated above, bonafides of the need has to be established. Thereafter, it must be shown that the person on whose behalf eviction is sought is a member of his family dependent on him. In a catena of decisions it has been held that the term “dependent” not only takes in financial dependency, but other forms of dependency as well. For example, a son or daughter, who unquestionably is a family member of the landlord, who may not be financially dependent on him, still could be a dependent on the landlord for the purpose of starting a

new venture in the tenanted premises, provided he has no other place to start the intended business venture. It is quite natural because of the proximity of the relationship between them, he would look up to the landlord for a help. It is also to be seen that the expressions “for the occupation of any member of his family dependent on him” would apply only to living persons/natural persons and not to juristic persons, other legal entities and association of persons.

22. What is important at this juncture is to understand the relationship between the partners in a firm. Section 4 of the Partnership Act defines “partnership” as the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all. In **Dulichand v. I.T.Commissioner (AIR 1956 SC 354)** it has been held that our partnership law is based on the English law and we have also adopted the notions of English lawyers as regards partnership firm. Further, it is held thus:

“..... The general concept of partnership, firmly established in both the English and Indian systems of law, still is that a firm is not an entity or 'person' in law but is merely an association of individuals and a firm name is only a collective name of those individuals who constitute the firm. In other words, a firm name is merely an expression, only a compendious mode of designating the

persons who have agreed to carry on the business in partnership.”

Long line of decisions show that Indian law has not given a legal personality to a firm apart from the partners. One of the contentions raised in R.C.R.No.228 of 2018 is that the person on whose behalf the bonafide need is set up, viz.,Smt.Hajira, is a sleeping partner. This expression is not defined in the Partnership Act. In English law, the expression “dormant partner” is used interchangeably for “sleeping partner”. **Pullock and Mulla on the Indian Partnership Act** (7th edition, page 49) makes the following observations:

“A sleeping partner is nevertheless a partner, even when he only 'sleeps'. Sometimes partners are absolutely inactive or deliberately choose to be inactive, for instance, in some cases where a partner is a government servant or person with similar status who is, by service rules, prohibited from engaging in any trade or business.”

If a partner could seek eviction of a tenant from a building owned by a partnership firm, whether such partner is a sleeping partner or not makes no difference in the legal parlance.

23. We have no hesitation to negative the claim by a firm, seeking eviction of a tenant from a building owned by the partnership

firm, on the ground of bonafide need of an individual partner when his/her claim is that he/she wanted to occupy the building for personal use. We find it impossible to stretch the law under Section 11(3) of the Act to hold that occupation by such a partner will amount to own occupation by the landlord, as he/she individually cannot be regarded as the landlord as long as the building remains in the ownership of the firm. We have already mentioned the distinctions between a partner and a co-owner. Once we find that the building belongs to a firm, the rights and obligations of the partners are governed by the terms of the contract and in the absence of any provisions in the contract, they shall be guided by the Partnership Act. Finding that the building belongs to a partnership firm cuts at the root of the claim by an individual partner for own occupation since he/she ceases to be a landlord. In other words, no partner individually can claim to be a landlord when the firm owns the building. Hence, one partner cannot claim eviction on the ground of bonafide need for his/her own occupation of the building. Clear wording in Section 11(3) of the Act would show that a landlord alone can claim eviction on the ground of bonafide need of a building for his own occupation. Since the individual partner cannot be regarded as landlord in respect of a building owned by a firm, the provision does not apply in such a case. Corollary is that in such a situation Section 11(3) of the Act can be invoked by a firm only when the firm itself bonafide needs to

occupy the tenanted premises. So, we affirmatively decide that the claim in R.C.P.No.21 of 2015 raised by the respondents is unsustainable in law, even if it is established that Smt.Hajira is a partner of the 1st respondent firm.

24. There cannot be any doubt that the second portion of Section 11(3) of the Act, viz., eviction on the ground of bonafide need for the occupation of any member of landlord's family dependent on him, does not arise at all in this case. Therefore, we have no hesitation to hold that the order of eviction passed by the authorities below on the ground of bonafide need for the occupation of a partner in R.C.P.No.21 of 2015, which was confirmed in appeal is unsustainable in law. In the absence of establishing bonafide need, the question of considering the provisos to Section 11(3) of the Act does not arise at all.

25. Claim by the respondents in R.C.P.No.17 of 2016 is still worse. It has come out in evidence that the person on whose behalf eviction is sought under Section 11(3) of the Act, viz., Smt.Jameela, is not a partner of the firm. It has been proved that she is only a legal heir of a deceased partner. Above mentioned logic squarely applies to the situation in R.C.P.No.17 of 2016 where we have no difficulty in finding that the eviction petition filed by a partnership firm on the ground of bonafide need for the occupation of a legal heir of a partner cannot fit in either in the expression "own occupation" or "for the occupation of any

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member of landlord's family dependent on him”.

26. For the aforementioned reasons, we find that the order of eviction passed under Section 11(3) of the Act in both the cases are legally incorrect and unsustainable.

In the result, revision petitions are allowed. Orders of eviction under Section 11(3) of the Act passed concurrently by the Rent Control Court and Appellate Authority are set aside. Eviction petitions are dismissed.

All pending interlocutory applications will stand closed.

**A.HARIPRASAD,
JUDGE.**

**T.V.ANILKUMAR,
JUDGE.**

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